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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

**"COMBATING ELDERLY NEGLECT: A CRITICAL  
ANALYSIS OF LEGAL PROVISIONS DEALING WITH  
ELDERLY CARE WITH SPECIFIC FOCUS ON  
MAINTENANCE AND WELFARE OF PARENTS AND  
SENIOR CITIZENS ACT, 2007"**

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**1) Abstract**

Aging is inevitable and cannot be avoided at any cost. Each of us must grow old at some point or the other. It is during the old age that every individual need help and special care. Due to increase in life expectancy, population, increase in cost of living, the concept of joint family has completely vanished in the Indian society. This made the elderly dependent and helpless at the same time. Unfortunately, the children consider their parent as a burden not willing to spend their money for them, forget money, they are not even in a position to spare some time with them. The instances of abuse and neglect of elderly by the children are exponentially rising day by day. It is pertinent that there are stringent laws for the protection of elderly and senior citizens in our country.

Maintenance of elderly is not a new concept. In fact, it is not a concept at all, it is the responsibility of every individual to take care of his/her parents. It is a pious obligation and the same is reiterated by several religious texts including but not limited to Vedas, Upanishads since times immemorial. The parents are considered as manifestation of God and take the form of Brahma, Vishnu and Maheshwara.<sup>1</sup> It is at this age that parents suffer the most and seek help be it mental or physical from the children. Life is most vulnerable at this stage of life and death is unpredictable. This demands special care from dear ones. However, the elderly are not getting the care and attention they deserve as per the law.

This paper seeks to analyse the contemporary legal provisions governing elderly care in India.

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<sup>1</sup> ISSN: 2456-0553

It further deals with the various rights of senior citizens and policies made by the government for their welfare. The paper also discusses the protection provided to the elderly in various general legislations and personal laws. We also determine the legal remedies available for elderly in case of their abuse. We further give an overview of the legal framework governing elderly protection in other foreign countries. The key focus of this paper lies in the legal provisions mentioned in the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. We conclude by summarizing the present legal position and suggestions for improving the situation of Senior Citizens in India.

## **2) Introduction**

### ***“Matru Devo Bhava; Pitru Devo Bhava”.***

As the Sanskrit saying says, parents are considered as manifestation of God. According to Indian tradition and culture parents are worshipped as true reflection of gods and goddesses. Thus, all the religions expect adult children to take care of their parents, pay due respect to them. It is a pious obligation of every individual to ensure the welfare of their parents and other senior citizens of the family. However, it is not only a pious duty it is a binding legal duty as well. If such ‘duty’ is not fulfilled it gives rise to a ‘right’ to parents and senior citizens to seek financial and physical assistance from children. Also known as ‘right to maintenance’ of the parents.

Until 2007, there was no specific law dealing with the rights of senior citizens. However, there are provisions dealing with senior citizens mentioned in the Indian constitution and various general laws including but not limited to the Code of Civil Procedure 1908, Criminal Procedural Code, 1973, the Protection of women from Domestic Violence Act, 2005 and the Indian Penal Code, 1860. Apart from this there are several personal laws as well dealing with maintenance of parents such as Hindu Adoption and Maintenance Act, 1956 and other laws governing Muslims, Christians and Parsis.

Then came the Maintenance and Welfare of Parents and Senior Citizens Bill, 2007 that was introduced in Lok Sabha through Ministry of Social Justice and Empowerment. The Act explicitly provides for the rights of senior citizens and safeguards for implementation of such rights. The senior citizens can request maintenance and also enforce their rights against physical torture and mental abuse. The bill received the President’s consent on 31<sup>st</sup> December,

2007 after getting a sweeping majority in Lok Sabha. However, these laws are not effectively implemented in reality. There are a lot of gaps and lacunas that come in the way of effective implementation of the Act. The Act contains 7 chapters and 32 sections. It provides for basic needs, adjudication and speedy disposal of matters in the best interest of senior citizens. It aims to enforce all the rights guaranteed by the constitution in favor of the elderly to lead a dignified life

### 3) History

#### **Colonial Era**

The Elderly in India were primarily cared by the joint family system prevalent in India. During the Colonial time period i.e., from late 18<sup>th</sup> Century to 1947 more focus was laid on controlling law and order and little importance was given to social welfare. However, this time period had established foundation for modern legal system and present-day legal measures for elderly care in India. Several Legal provisions prevalent today is derived from the colonial legislations made by the Britishers. Though, the Britishers did not expressly provide for elderly protection, however, their legal developments assisted in shaping legal protection for senior citizens in India.<sup>2</sup>

The Britishers majorly enacted four pieces of legislation that provided for the benefit of senior citizens. *Pension Act, 1871* was one such legislation that provided a pension scheme for the government employees. This scheme was enacted by the Royal Commission on Civil Service. It had undergone amendments in 1919 and 1935. The main objective of the legislation is to ensure continued financial support to the senior citizens after their retirement. This is one of the most beneficial pieces of legislation to every government employee in India ensuring their welfare till today without having to depend on others for their financial well-being.

*Workers' Compensation Act, 1923* is another important legislation enacted in the colonial time. The main object of this legislation is to provide compensation to the families of the workers who die during the course of employment. This is helpful to the senior citizens in a way that it allows parents to claim compensation in case of death of their child in the course of employment.

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<sup>2</sup> Dr. Jain Parkash Indira, 'Maintenance and Welfare of parents and senior citizens Bill: Some reflections,' Helpage India research & Development Journal. 2007, 13(3).

In terms of Inheritance, in order to resolve the issues arising out of inheritance the Britishers had enacted two important laws for both Hindus and Muslims viz, ***The Indian Succession Act, 1925*** this act provided that the father would inherit the property of the child dying intestate. In absence of father and other male lineal descendants, the property would devolve upon the mother. ***The Shariat Act, 1937*** provided for partition of property among the legal heirs of a deceased Muslim. The enactment ensured that after covering funeral expenses, paying off all the debts and fulfilling the obligations of the deceased the remaining property shall be distributed amongst the elders of the family of the deceased.

The concept of social insurance gained prominence in the early 1940's. During this time period there were increasing demands for a formal system providing financial security to the citizens including the elderly. The socio-economic situation was such that the social welfare of the citizens became important than anything else.

The ***Adarkar Commission Report***, submitted on August 15<sup>th</sup> 1944 sowed seed for a social insurance scheme in India. The main objective was to make a financially sound scheme where the benefits sometimes would be contributory and sometimes non-contributory. One of the significant outcomes of the report is ***Employess' State Insurance Act, 1948***, which provided a comprehensive framework of social insurance for workers. The act has been amended in 1966 in order to widen the scope the and benefits as per the changing needs of Indian workforce.

### **Post-Independence**

After the Independence in 1947, India brought several legal measures for the welfare and well-being of the elderly. These provisions were inserted in the constitution, legislations and several policies made by the government. All the statutory laws, measures and policies sought to ensure the well-being and dignity of senior citizens.

***Article 41 of the constitution***, a Directive Principle State Policy, *directs the state to make effective provisions for securing the right to work, education, and public assistance in cases of unemployment, old age, sickness, and disablement.*<sup>3</sup>

***Article 46 of the Constitution***, another Directive Principle, *directs the State to promote with*

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<sup>3</sup> <https://indiankanoon.org/doc/1975922/>

*special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.* The term “weaker section” impliedly includes senior citizens.<sup>4</sup>

These two provisions mentioned in the constitution however, unenforceable bind the state to ensure the welfare, dignity and well-being of the senior citizens. The state must consider these principles while making statutory laws, it has a positive duty in enforcing these provisions.

The Government had made *National Policy for Older people, 1999* in order to ensure the socio-economic and physical well-being, welfare and dignity of senior citizens in our country. The policy seeks to address the problems being faced by the elderly Under the scheme the govt had launched *Annapurna Scheme* for the elderly who are helpless and unable to maintain themselves. Under this, the eligible senior citizens are provided free rice and wheat through the public distribution system.

*Pension Fund* was established for the elderly working in the organized sector.

*Income tax exemptions* are provided for senior citizens under Section 88B, 88D AND 88DB.

*Concessional rates* are provided for senior citizens travelling by air and railway.

Certain *re-employment centres* were set up by the government for the senior citizens.

Further, **several other schemes** were launched by the government for the benefit of the elderly like medical insurance, Jeevan Akshay Yojna which will be discussed elaborately in some time.

#### 4) **Rights of Senior Citizens**

Senior citizens form a crucial part of the population. It is necessary to recognise their rights and effectively enforce them. They are the most vulnerable group in the population. They are often targeted by neglect and ignorance. They are considered as a burden in the society. Their helplessness is taken as an advantage in order to exploit them. While the world is busy focusing on human rights, it is necessary to understand that these rights can be claimed from pre-birth until death. Recognising that senior citizens have fundamental human rights is a critical issue. As a result, they are often overlooked as a group.<sup>5</sup> To better comprehend older citizens' human

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<sup>4</sup> <https://indiankanoon.org/doc/352126/>

<sup>5</sup> Gokhale SD. Towards a Policy for Aging in India, In Phoebe S. Liebig, S. Irudaya Rajan (eds.), An Aging India: Perspectives, Prospects & Policies, Rawat Publication, New Delhi. 2005, 217-218.

rights, consider the following.

- 1) **Right to Life:** Often senior citizens are subjected to cruelty and neglect by their children. These actions might result in death as well. However, it may not be direct. The topic of euthanasia becomes important in this regard. Euthanasia is an act of killing elderly people in order to prevent them from suffering from serious health issues. Euthanasia can be active and passive. Passive euthanasia involves removing the life support system of the person suffering from serious illness. This type of euthanasia is legal to some extent. Whereas the passive euthanasia is considered illegal in most of the countries as different methods are used to kill the person suffering deadly disease. The most crucial aspect to bear in mind is that right life is not mere existence, it provides a right to live a life with dignity encompassing right to health and right to welfare.
- 2) **Freedom for cruelty and inhuman treatment:** It is difficult to exactly determine what constitutes 'cruelty and inhuman treatment' when we talk about senior citizens. However, it is apparent that senior citizens are being tortured and ill-treated by the children and other members of the family due to their dependency and helplessness. Often cases of neglect of parents by children by not providing meals, medicines are reported day in and day out. This amounts to gross violation fundamental human rights of the senior citizens. Further, several offences including sexual offences are committed against the elderly
- 3) **Right to privacy:** Violation of right to privacy of senior citizens is committed in different ways. The physical privacy of elderly patients is often violated in hospitals at the time their treatment by leaving them half naked on the stretcher. Further, the hospital management compromise the medical records and personal details of the elderly citizens getting treated in their hospital. Further, the staff in charge of the senior citizens often disclose their personal details which makes them vulnerable to serious offences. The persons in charge to maintain the financial accounts of the senior citizens tend to commit cyber offences by stealing money from their accounts without their knowledge.
- 4) **Freedom for Illegal Detention:** Illegal detention occurs when senior citizens are sent to old age home against their will and wish. This is the most common phenomenon in today's time. Every senior citizen has got the right to choose where to stay and to choose not to go to an old age home. This right is not given due regard by the family members of the senior citizen. This situation arises when the elderly fall sick and in need of medical treatment. The family member unable to take their responsibility often send them to an old age home without even considering their willingness.

- 5) **Right to Fair and Speedy justice:** It is when a legal suit is filed against a senior citizen or when a senior citizen wants to file a suit in the court. It is the obligation of the judiciary to ensure that the legal proceedings are conducted in a fair and speedy manner without causing unnecessary inconvenience and delay. Further, the senior citizens also face difficulty in claiming the financial and medical benefits provided by the government to which they are legally entitled to as the procedure is cumbersome and complicated.
- 6) **Right to Social Security:** Every senior citizen must be provided social security in order to ensure their welfare. It is the responsibility of the government to prepare social security legislations for senior citizens of the country. The legislation must be inclusive covering all categories of senior citizens without any discrimination.
- 7) **Political Rights:** The senior citizens must be given the right to voting irrespective of their ability to do so. Special arrangements such as postal ballot must be made allowing them to cast their vote. Further, they must be given opportunity to be a part of various political parties and associations in order raise their voice and put forth their valuable suggestions.

## **5) Personal Laws & Other legislations**

### **6.1 Personal Laws**

In India almost all the personal laws contain several provisions that ensure the welfare of senior citizens. All the personal laws are based on various religious principles that consider parents and elders as manifestation of God. Every individual is obliged to take care of their parents and other elders of the family as enshrined in the religious texts. Our personal laws also reflect the same.

#### ***Hindu Adoption and Maintenance Act, 1956***

Under the act, ***maintenance is defined under Section 3(b)(i)*** and includes provision for food, clothing, residence, and medical attendance and treatment within its definition.

#### ***20. Maintenance of children and aged parents. —***

- (1) *Subject to the provisions of this section a Hindu is bound, during his or her lifetime, to maintain his or her legitimate or illegitimate children and his or her aged or infirm parents.*

(2) A legitimate or illegitimate child may claim maintenance from his or her father or mother so long as the child is a minor.

(3) The obligation of a person to maintain his or her aged or infirm parent or a daughter who is unmarried extends in so far as the parent or the unmarried daughter, as the case may be, is unable to maintain himself or herself out of his or her own earnings or other property.<sup>6</sup>

*Explanation.* —In this section “parent” includes a childless step-mother.

As per **Section 20 of the Hindu Adoption and Maintenance Act, 1956** it is the responsibility of every Hindu to maintain his or her aged, infirm parents so long as they are unable to maintain themselves out of their own earning or other property. Thus, it imposes a duty upon every Hindu to take care of his or her parents. This duty is imposed upon both male and female children without any discrimination. Both son and daughter are equally responsible to take care of their parents. Further, the section says that the term ‘parents’ includes natural father, mother and childless step-mother. The section is broad enough to include childless step-mother. The term parents also include adoptive father and adoptive mother.

***Khetramani Das v. Kashinath Das***, in this case the court established a precedent that maintenance of widowed daughter-in-law is an indispensable obligation under Hindu Law.<sup>7</sup> In this case, the court had reiterated that it is the legal and moral obligation of every Hindu to maintain the family relying upon Dayabhaga Law and Manusmriti.

In the case, ***Jagjit Singh Bhatia v. Balbir Singh Bhatia*** the court held that Hindu son is personally obliged to maintain his aged mother irrespective of inheritance of his father’s estate.

***Dr. Mrs. Vijaya Manohar Arbat v. Kashirao Rajaram Sawai & another*** in this case the court held that even married daughter is having an obligation to take care of her parents if she is having the means to do so. This clearly explains that even if a daughter gets married, her obligation to maintain her parents is not dispensed with, she is still responsible to maintain her parents.

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<sup>6</sup> Section 20 in The Hindu Adoptions and Maintenance Act, 1956

<sup>7</sup> *Khetramani Dasi v. Kashinath Das* (1868) 2 Beng LR 15

*Parmar Dahyabhai Hemabhai v. Parmar Prakashbhai Dahyabhai* in this case the court held that irrespective of whether parents are receiving pension or not if they are unable to maintain themselves and if the children are having sufficient means to maintain them, they are obliged to do so. It stated that merely parents receiving pension does not mean that they can maintain themselves. Thus, the maintenance petition was allowed by the court.

Under **Section 23** the amount of maintenance is determined by court giving due regard to several factors. The court can also change the amount if it feels that it is not sufficient to ensure the welfare. Thus, the Hindu Law expressly imposes a legal obligation upon the children to take care of their parents in instances where they are unable to maintain themselves out of their earnings and property. This ensures a sense of security and of the welfare of the parents.

As per the **Hindu Succession Act, 1956** parents are recognized as class-I legal heirs ensuring that they get a share in the property of the deceased. This ensures that senior citizens are not excluded a share in the property of their deceased children.

As per the **Muslim Personal Law (Shariat) Application Act, 1937** children are obliged to maintain their parents and support them financially. However, this obligation arises only when the parents are not having sufficient means to maintain themselves. However, without any exception every Muslim is obliged to maintain his wife and children irrespective of any means and resources.

## **6.2 Other Legislations**

### ***Section 125 Code of Criminal Procedure***

### ***Section 144 of Bharatiya Nagarik Suraksha Sanhita, 2023***

The CrPC is a secular law and provides a right to maintenance to all the senior citizens irrespective of their religion. Under this provision, the parents can claim maintenance from their children if they do not have sufficient means and are being neglected by the children. The court can also provide for monthly allowance to the parents through interim order while the suit is pending before the court. The court has to dispose of the matter within 6 months of filing of the application for maintenance. In case of non-compliance with the order the person can be sent to prison by the Magistrate. The amount of maintenance can also be changed by the magistrate from time to time.

### ***Maintenance and Welfare of Parents and Senior Citizens Act, 2007***

MWPSA Act, 2007 is a piece of legislation that specifically ensures the welfare of parents and senior citizens. It provides all the rights as guaranteed by the constitution to senior citizens. This legislation covers parents; natural and adoptive, grandparents, and childless elders. The childless senior citizens can seek maintenance from relatives. The term 'relatives' includes any legal heir who is legally entitled to the property of the childless senior citizen after their death. An application for maintenance can be filed either by themselves or through some organization. The application must be disposed of within 120 days by the tribunal. Special maintenance tribunals are established to adjudicate matters under this act. Further, punishment of imprisonment is also provided in case of non-compliance with the order. Apart from maintenance it also provides for several other facilities such as old age homes, redemption of property by the parents from children in case of neglect etc.

### **6) Analysis of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007**

Prior to 2007 there was no specific legislation governing the rights of senior citizens in India. They could only be claimed under the domestic laws such as the Hindu Adoption and Maintenance Act, 1956 and Code of Criminal procedure, 1973. The situation changed in 2007 when the Maintenance and Welfare of Parents and Senior Citizens Act came into force with an aim to protect the rights of senior citizens. The core focus of the Act is only to preserve the rights of the elderly population. The act was adopted under Article 41 of the and Entry 23 of the concurrent lists. The law is derived from Himachal Pradesh. The state had for the first time passed the "*Maintenance of Parents and Dependants Act, 2001*".

In its 28th report, the Standing Committee on Social Justice and Empowerment emphasised the necessity of passing the aforementioned legislation. An affordable, quick, and easy system for safeguarding older citizens' rights is established under this law. On December 29, 2007, the President of India gave his assent to the Bill after it had been approved by both houses. It is published on December 31, 2007, in the official gazette. While some states have already put the Act into effect, others have not yet done so and have not created regulations.

According to the Act, the heirs and children are legally obliged to take care of their parents and to support them. Further, it requires the state government to establish senior living facilities such as old age homes. An application can be made by the parents or senior citizens to the

tribunal under this Act to make a claim of monthly payment from their lawful heirs or children.<sup>8</sup>

According to **Section 2(a)** of the Act, the definition of ‘children’ includes son, daughter, grand-son and grand-daughter. This means that only biological children and grandchildren are considered as children as per the act. There is a need to expand the definition as there are several instances where senior citizens are ill-treated and subjected to cruelty by daughter-in-law’s and sons-in-law that is not covered under the definition.

**Section 2(b)** of the Act, defines ‘maintenance’ which only includes basic necessities of life such as food, clothing, shelter and medical aid. But in today’s time the meaning of the term basic needs had undergone drastic change. It also includes safety and security to lead a comfortable and dignified life.

According to **Section 2(g)** of the Act, ‘relative’ is defined as a person who is the legal heir of the senior citizen or the one who is in possession of the property after the death of the senior citizen who is childless. But this gives rise to legal dispute wherein several people tend to claim property by fabricating fake wills.

**Section 2(h)** defines ‘senior citizen’ and includes any person who is citizen of India and has attained the age of 60 years or above.

**Section 4** of the Act allows a senior citizen who is unable to maintain himself to make an application claiming maintenance from children or relative as the case maybe, to such extent that it is sufficient for the senior citizen to lead a normal life.

**Section 5** provides the procedure for making application for maintenance. Either the senior citizen can make application for himself or any voluntary organisation can make application on his behalf making it easy and convenient. Further, the tribunal can pass interim orders during the pendency of application to provide for monthly allowance to the senior citizen. In case of failure to comply with the order the tribunal can levy fine and also order for imprisonment of up to 1 month or until the payment is made whichever is earlier.

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<sup>8</sup> A Critical Analysis of Senior Citizens’ Rights in India: Pradipty Bhardwaj

**Section 7** of the Act deals with creation and constitution of Maintenance tribunals at each sub-division where the tribunal will have all the powers as that of a civil court. A conciliating officer may be consulted before considering an application in order to resolve the conflict amicably more than a month later. A maximum of ninety days should be allotted for the tribunal to decide the case. According to section 16, an appeal may be submitted to the state government-established appellate tribunal and must be decided within a month.

**Section 9(2)** determines the maximum amount of maintenance as ten thousand rupees per month, which is meagre in today's time. As we know that the medical expenditure itself is very higher even for a general checkup. Further, there will be other expenses to cover the day-to-day needs of the elderly which cannot be covered within the maintenance amount stipulated. Thus, there is a need to increase the amount and it should be fixed as per the capacity of the children or relative as the case maybe.<sup>9</sup>

After passing an order for maintenance, the children or relatives obliged shall deposit the amount as per with the tribunal within 30 days from the date of making such order as provided under **Section 13** of the Act.

The tribunal can also order for payment of simple interest for the amount of maintenance ordered which shall not be less than 5 % and not exceeding 18 % as provided under **Section 14** of the Act.

As per **Section 19** it is the discretion of the state government to establish old-age homes with at least one old-age home in each district. The old-age home must accommodate a minimum of 150 senior citizens. The state government can also make a scheme for the management of old-age homes prescribing different standards and parameters. However, a major setback in this provision is that it is not a mandatory obligation rather a mere discretion of the state to establish old-age homes.

Further, **Section 20** imposes a duty upon the state government to ensure that the government hospitals are fully equipped with sufficient beds for the senior citizens. It also has to provide for separate queues for the senior citizens at all places. The hospital should ensure treatment

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<sup>9</sup> The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 No. 56 Of 2007

for chronic illness, terminals and degenerative diseases. It also promotes research on chronic illnesses affecting the elderly and geriatric patient facilities in all district hospitals, which are run by medical officers with geriatric care experience.

***Protection of life and property of senior citizens:***

One of the most common instances in today's time is where the parents transfer property to their children out of love and affection by way of gift or otherwise. But the children after taking possession of the property, without an ounce of gratitude throw the parents out of the house making them helpless. The parents are left all alone without any means to survive. This is the most cruel and horrible thing the children could do to their parents.

In order to avoid such activities, the act provides for **Section 23** which states that:

***23. Transfer of property to be void in certain circumstances***

- 1. Where any senior citizen who, after the commencement of this Act, has by way of gift or otherwise, his property, subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and such transferee refuses or fails to provide such amenities and physical needs, the said transfer of property shall be deemed to have been made by fraud or coercion or under undue influence and shall at the option of the transferor be declared void by the Tribunal.*
- 2. Where any senior citizen has a right to receive maintenance out of an estate and such estate or part, thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous; but not against the transferee for consideration and without notice of right.*
- 3. If any senior citizen is incapable of enforcing the rights under sub-sections (1) and (2), action may be taken on his behalf by any of the organisation referred to in Explanation to sub-section (1) of section 5.*

Thus, it is clear from Section 23 that any property transferred by a senior citizen on the condition that the transferee shall ensure welfare i.e. basic needs and amenities, of the transferor can be considered to have been made by coercion, fraud or undue influence if the transferee fails to fulfil the condition of transfer and the tribunal can declare the transfer as null and void. This provision is made in line with **Section 122 of the Transfer of Property Act** which defines gift as follows:

***122. "Gift" defined. —***

*"Gift" is the transfer of certain existing moveable or immoveable property made voluntarily*

*and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.*

*Acceptance when to be made. —*

*Such acceptance must be made during the lifetime of the donor and while he is still capable of giving.*

*If the donee dies before acceptance, the gift is void.*

Thus, it is clear from Section 122 of the TPA that gift can be existing movable/immovable property made by the donor in favour of the donee without any consideration i.e. out of love and affection and during the life time of the donor. Here, the senior citizen makes a gift deed based upon the condition that the transferee shall look after the transferor during his old-age is a transaction without any monetary consideration.

Further, **Section 126** of the TPA provides for revocation of gift if on the happening of any event as agreed by the donor and donee.

**126. When gift may be suspended or revoked. —**

*The donor and donee may agree that on the **happening of any specified event** which does not depend on the will of the donor a gift shall be suspended or revoked; but a gift which the parties agree shall be revocable wholly or in part, at the mere will of the donor, is void wholly or in part, as the case may be.*

*A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded.*

*Save as aforesaid, a gift cannot be revoked.*

*Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice.*

Thus, here the senior citizen can revoke the gift deed as per section 126 if the transferee fails to ensure the welfare of the donor during his old age and such gift deed shall be considered void by the tribunal.

***Vinod Anand v. Deputy Commissioner-cum-Appellate Tribunal and Ors.***<sup>10</sup>

The senior citizen petitioners, the parents in this case were compelled to transfer the property to their son. He threatened to commit suicide if the property is not transferred in his favour.

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<sup>10</sup> 2016(1) RCR(Civil)278

The Chandigarh High Court of Punjab and Haryana in this case ruled that the petitioner's age and vulnerabilities were exploited excessively in order to transfer the property. Additionally, the Court permitted the petitioner to use the meaning of "otherwise" found in section 23 of the 2007 Act to assert his legal authority to declare the transfer void.

*Promil Tomar and Ors. v. State of Haryana and Ors.*<sup>11</sup> In this case, the High Court upheld the order passed by the Maintenance tribunal declaring the transfer made by the aged parents as null and void after it was proven that the son and daughter-in-law have physically assaulted the parents and ill-treated them by not providing basic amenities.

### **Eviction of Daughter-in-law under the MWPSA Act, 2007**

As per the *Maintenance and Welfare of Parents and Senior Citizens Act, 2007* the children who fail to maintain their parents can be evicted by the parents by filing an application before Maintenance Tribunal. However, this right is negated by the right provided under the *Protection of Women from Domestic Violence Act, 2005*. As per **Section 17(1)** of the Act the wife is having the right to residence in a shared household comprising the house belonging to the husband or the joint family property in which the husband is entitled to a share. Recently, there has been conflict between the right of senior citizens to evict daughter-in-law on the grounds of ill-treatment and abuse and the right of daughter-in-law to claim residence in the shared household.

The Apex Court in the case *Smt. S. Vanitha v. The deputy commissioner, Bengaluru, urban district & ors* had given a harmonious interpretation to both the rights. It opined that the objectives of both the legislations are similar. The Senior Citizens Act, aims to protect the right to residence of elderly with respect and dignity. In the same way the Domestic Violence Act, aims to protect the right of a women (subjected to harassment) to reside in the shared household. However, the court held that there must be a harmonious interpretation of both the rights without defeating the object of any legislation particularly. The court held that the right to residence of the women under the Domestic Violence Act is not absolute especially when senior citizens are involved. If there is evidence of neglect and abuse of senior citizen then the provisions of Senior Citizens Act shall prevail over the Domestic Violence Act. Thus, it is pertinent to balance the rights of senior citizens and women residing in shared household.

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<sup>11</sup> (2014)175(1) PLR94

The course of action varies from case to case depending upon the facts and circumstances.

In the case *Pooja Mehta V. Union of India*<sup>12</sup>, the aged parents invoked the Senior Citizens Act for eviction of their son and daughter-in-law from the shared household. They asserted that both the son and daughter-in-law are subjecting them to cruelty and harassment making it difficult to stay in their own house. The police authorities based on the complaint filed have evicted the daughter-in-law from the shared household. The daughter-in-law contesting her conviction, filed a writ in the Delhi High Court, arguing that Section 17 of the Domestic Violence Act gave her the right to live in the shared household. The court faced with a difficult situation to balance the rights of senior citizens and daughter-in-law. The court relied upon the SC decision in the case *Smt. S. Vanitha v. The deputy commissioner, Bengaluru, urban district & ors* where it was held that the right to residence of the women under the Domestic Violence Act is not absolute especially when senior citizens are involved. If there is evidence of neglect and abuse of senior citizen then the provisions of Senior Citizens Act shall prevail over the Domestic Violence Act. Further, there was strong evidence proving constant ill-treatment and abuse by the daughter-in-law. Thus, the court had applied the provisions of Senior Citizens Act over the Domestic Violence Act.

### **7) Landmark Cases under the MWPSA Act, 2007**

#### ***1) Smt. S. Vanitha v. The deputy commissioner, Bengaluru, urban district & ors***<sup>13</sup>

On May 30, 2002, the appellant and the fourth respondent tied the knot. The appellant's husband had property in his name prior to the marriage. However, he later transferred it to his father through a sale deed a few years later. The appellant's husband filed for divorce from her shortly after a marital disagreement arose between them. The Fourth Respondent sold the suit property to his father on 5<sup>th</sup> October 2006 for a sale consideration. The appellant and respondent had a daughter by that time. The appellant's mother-in-law received it as a gift from the husband's father after the divorce proceedings were initiated. For the dowry, the appellant has filed a harassment lawsuit against her mother-in-law and spouse. The appellant's in-laws filed an application under the Senior Citizens Act 2007 to evict their daughter-in-law from their home while the proceedings were still ongoing.

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<sup>12</sup> 2024 SCC Online Del 7112

<sup>13</sup> 2020 SCC Online SC 1023

The Deputy Commissioner appealed and upheld the Assistant Commissioner's decision to grant the appellant's in-laws' application. Under Article 226 of the Constitution, the appellant filed a writ proceeding before the Karnataka High Court's Division Bench and Single Judge. The Division Bench ordered the appellant to leave the suit premises and sustained the Deputy Commissioner's Order. In order to contest the authority of the Assistant Commissioner and the Deputy Commissioner to order her evicted under the Senior Citizens Act of 2007, the appellant filed a case in the Supreme Court under Article 136 of the Indian Constitution.

The Supreme Court in this case held that the rights available under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 cannot prevail over the right to residence of a woman under the Domestic Violence Act, 2005. The court held that the tribunal under the Senior citizens Act may have the power to order for eviction for the protection of senior citizen but this power cannot be used unless the other claims of the dispute are considered. The court tried to harmonize the provisions of MWPSA Act, 2007 and the Domestic Violence Act, 2005. The court opined that in case of conflict between the provisions of two legislations, it is necessary to compare the dominant objectives to consider which one would prevail over the other. Thus, the court held that the provisions of Senior Citizens Act shall prevail over the Domestic Violence Act as the implementation of latter would defeat the very purpose of the former legislation.

## 2) *Urmila Dixit vs Sunil Sharan Dixit (2025)*<sup>14</sup>

In this case an aged mother had purchased the suit property on January 23, 1968. She gifted the property in favour her son, the respondent on September 7, 2019. The deed imposed a condition that the son would take care of his mother and the same was made as a promissory note as well. The Promissory not also contained a clause allowing the mother to revoke the gift deed if the son fails to maintain his mother as per the gift deed and promissory note. Later, the appellant approached the court under **Section 22 and 23 of the MWPSA Act, 2007** alleging breach of condition by the son. She also stated that she was ill-treated and neglected by the son and sought to revoke the transfer made in favour of the respondent.

The Collector upheld the decision of Sub Divisional Magistrate, Chhatarpur's declaration that the gift deed was void. The Madhya Pradesh High Court's Division Bench, however, reversed

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<sup>14</sup> 2025 INSC 20

these rulings, concluding that the promissory note could not be used in place of a maintenance provision and that the gift deed did not specifically contain one. The decision of Division Bench was challenged before the Supreme Court.

The main issue before the Apex Court is whether the Maintenance Tribunals established under the MWPSA Act, 2007 are empowered to consider property transfers void and restore the property back to the transferor in case of non-compliance with conditions of transfer or not?

The Supreme Court in this case overturned the decision of the Division Bench and held that the maintenance tribunals have broad powers and can order to for eviction and transfer of possession of property back to the donee under **Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007**. The court relied upon the judgment passed by the court in the case **S. Vanitha V. Deputy Commissioner, Bengaluru Urban District and ors. (2021)** wherein it was held that the tribunal have got the powers to order for eviction and transfer of property.

### 3) ***Sudesh Chhikara v. Ramti Devi***<sup>15</sup>

In this case the respondent, Mrs. Ramti Devi, a senior citizen had filed a petition under **Section 23(1) of the MWPSA Act, 2007** seeking cancellation of a release deed made in favour of her both the daughters in 2008. The respondent had purchased the suit property situated in Gurugram, Haryana. After a few years, she had filed for revocation of the release deed executed in 2008 on the ground that her daughters were not taking care of her and have neglected her. The application was filed before the Maintenance Tribunal under Section 23 of the Senior Citizens Act, 2007.

It was held by the Maintenance Tribunal that the Release Deed executed in 2008 was null and void as the children refused to maintain the mother. The Punjab and Haryana High Court had upheld the decision of the Tribunal. Aggrieved by the decision of the High Court, an appeal was preferred by the appellant before the Supreme Court.

The Apex Court in this case opined that for a transfer to be declared void it should be affected by fraud, coercion or undue influence.

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<sup>15</sup> 2022 INSC 1257

The following two conditions must be fulfilled to declare the transfer void under Section 23 of the MWPC Act, 2007:

- The transfer must be subject to the condition that the transferee is obliged to maintain the transferor by fulfilling the basic needs and physical needs.
- The transferor must have failed to fulfil the condition of maintaining the transferor by not providing the basic amenities and physical needs.

In this regard, the Supreme Court noted that, the transfer deed must be first subject to the condition of maintaining the transferor i.e. fulfilling the basic amenities and physical needs. This requirement is a sine qua non condition without which the transfer deed cannot be subject to test under Section 23 of the Senior Citizens Act, 2007.

Further, the Supreme Court opined that in this case the condition to maintain the senior citizen was nowhere mentioned in the transfer deed made by the transferor. Thus, it came to a conclusion that this transfer is a mere gift made out of love and affection without expecting anything in return made in favour of the children of the respondent. Therefore, the respondent had failed to establish the condition of transfer before the Maintenance tribunal.

Therefore, the Apex Court held that the Maintenance Tribunal and the High Court have erred in passing an order considering the transfer as null and void without any evidence of condition attached to the transfer. The court in this case had made an important interpretation that a transfer deed per se cannot be declared void unless there is condition of maintenance attached to it and such condition is proved to be violated by the transferee.

**4) *Anil Kumar Dhiman and another vs State of Haryana and others.*<sup>16</sup>**

In this case an application was filed by a father under the provisions of the Senior Citizens Act, 2007 claiming that he had purchased a plot of land and built a house in which his son and daughter-in-law (petitioners) were also staying. He alleged that the petitioners of mistreating him and his wife and also denying them the most basic needs. He further stated that the petitioners were trying to grab the house by forcing them to leave from their own house. Thus, he had no option but to ask the petitioners to leave the house, but of no avail.

Thereafter, an application was filed before the Sub Divisional Magistrate who acknowledged

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<sup>16</sup> CRWP-1357-2019

the fact that the father is the legal owner of the house. In his report he suggested that the petitioners be evicted which he forwarded to the District Magistrate's office. In light of this, the District Magistrate has ordered the eviction of the petitioners from the suit property.

The present writ petition was filed by the petitioners challenging their eviction from suit property claiming that it was a joint a Hindu family property. According to the son, he has also helped in the constructing the ground floor of the house which bought with money from the joint Hindu family property.

The court had rejected the claim of the petitioners that the property was gifted to them by the respondent. Further it opined that even if it is assumed for the sake argument that the property was gifted, it can still be declared void under certain circumstances.

The court had relied upon *Section 23 of the Senior Citizens Act, 2007* which says that any transfer made by a senior citizen subject to a condition of maintenance i.e. basic amenities and physical needs by the transferee can be declared null and void if the transferee fails to maintain the transferor. In case of contract, it would be breach of contract.

Thus, the court held that:

*“It may be noticed that even in the cases, where a gift deed was executed by the parents in favour of the children, it was held that irrespective of any condition regarding providing to the transferor the basic amenities, the transferee would be bound to maintain the transferor.”*

Accordingly, the court had rejected the claim of the petitioner and dismissed the suit with costs.

##### 5) ***Ramesh Vs Ishwar Devi***<sup>17</sup>

In this case an aged widow over 76 years named Ishwar Devi was evicted from her own house by her younger son, Ramesh. It was stated that the respondent's deceased husband had given his two sons each four killas of land. The remaining property i.e. a house and shop were left for the upkeep of the respondent. The respondent argued that her son Ramesh had fraudulently transferred the only property left for her maintenance after her husband's death.

Thereafter, the Respondent had filed an application before the Sub Divisional Magistrate under

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<sup>17</sup> LPA No. 483 of 2021

*Section 5(1) of the Senior Citizens Act, 2007* seeking for return of house and shop in her name and for protection of life, liberty, and property, receive maintenance and be permitted to live in her house with dignity. The application was allowed by the Sub Divisional Magistrate. He passed order for cancellation of transfer deed which resulted in transfer of two shops and house back to the mother. The respondent was given the right to stay in her house until her death. Further, the Sub Divisional Magistrate ordered her son, Ramesh, to provide his mother Rs. 2,000 per month as a subsistence allowance.

Aggrieved by the order SDM, Ramesh preferred an appeal to the Appellate Tribunal, which partially overturned the decision of the Magistrate and revoked the SDM's decision regarding cancellation of the transfer deed and solely upheld the maintenance award and her right to stay in her house. The order passed by the tribunal was further questioned before Single Judge Bench of the High Court which restored the decision of the SDM in toto.

The Division Bench had also upheld the decision passed by the single judge. It had opined that the single judge had done right thing by reinstating the SDM's order as the tribunal's order was vague, erred and legally incorrect. As a result, a well-reasoned order that was on file should have been kept in order to provide prompt justice to a poor mother who was over 76 years old and afflicted with a number of illnesses.

The court quoted:

*"It is often seen that after receiving the property from their parents, the children abandon them. In such situation, Section 23 of the Act of 2007 is a deterrent to this and hence is beneficial for the elderly old aged people who are incapable of taking care of themselves in their last phase of life."*

### **Conclusion**

Thus, it is clear from our research that elderly care is one of the least explored concepts not only in India but across the globe. As we know that 'Right to Life' as enshrined under Article 21 of the constitution extends till the death of such individual. It is not mere bodily existence rather it gives the right to live a dignified life in the society. The senior citizens are the most vulnerable group of population and need special care and rights to lead a comfortable life in the society. However, they are being neglected and ill-treated by their own children and

relatives. Their dependency is being exploited to the extent that they are dragged on to the streets becoming homeless after transferring property to the children.

This paper first analysed the **historical perspective** of the legislations pertaining to senior citizens in India. It is clear that, there is no specific legislation ensuring the welfare of senior citizens, however some of the social welfare legislations made by the Britishers during the colonial time established a strong foundation for today's elderly welfare. Several pieces of legislation such as the *Pension Act, 1871* and the *Indian Succession Act, 1925*, laid the foundation for elderly welfare. After the Independence, constitutional provisions such as *Article 41 and 46 of the constitution* along with policies like National Policy for Older Persons have obliged the state to make welfare policies and schemes for the elderly welfare.

Thereafter, we determined some of the important **rights available to the senior citizens** as basic requirement to live a dignified life. All the senior citizens have some fundamental rights that needs to protected to preserve their dignity and well-being. They must be protected from cruelty and inhuman treatment by their children and family members. The problem of illegal detention of elderly members in old-age homes against their will is rampantly increasing which needs to be addressed. The aged population are unable to pass through cumbersome and expensive legal procedure to enforce their rights leaving them helpless. There is a need for inclusive legislations that address their specific problems ensuring social welfare.

**Personal Laws** across religions play an important role in recognising the rights of elderly and ensuring their welfare. Almost all the personal laws especially the *Hindu Adoption and Maintenance Act, 1956* impose a moral and legal obligation upon the children in taking care of their parents. As per Hindu customs and traditions, parents are considered as manifestation of God and taking care of parents helps children attain salvation. Other special domestic legislations such as the *Code of Criminal Procedure* and the *Senior Citizens Act* provide for remedies to enforce the right of maintenance.

The **International Legal Framework** with regard to elderly care is robust tailored to meet the specific needs of senior citizens. In USA, there are specific legislations such as the *Old Americans Act, 1965* that provides social welfare services and *Social Security Act, 1935* which aims to provide financial assistance and healthcare services through Medicare and Medicaid. Further, the *Elderly Justice Act, 2012* addresses issues pertaining to cruelty and neglect of

senior citizens and strengthens the body of prevention mechanism. In UK, the *National Health Service* is the central body for providing free health care to the senior citizens. Across the globe, elderly care laws give importance to dignity, welfare and safety of the senior citizens.

*The Maintenance and Welfare of Parents and Senior Citizens Act, 2007* is a secular law passed by the of Social Justice and Empowerment. It is the only major law specifically dealing with elderly rights and welfare in the country. It imposes legal obligation upon the children to maintain their parents rather than a mere moral duty. The parents who are unable to maintain themselves can claim maintenance from their children/ relatives as the case maybe. Further, the Act allows the parents to claim the property gifted to the children if the children fail to maintain the parents as per the gift deed. This is a very thoughtful provision made by the legislature in order prevent cases of abandoning the parents after getting their property.

### **Suggestions:**

The **MWPSA Act, 2007** suffers from certain lacunas which needs to be addressed by making certain amendments to the Act. Some of them are listed below:

- 1) Firstly, the Maintenance amount provided in the Act is **Rs. 10,000** which is insufficient and very less. In today's time the medical expense itself costs a lot making it very meagre and inadequate. Further, the elderly need money to cover their day-to-day expenses in order to live a comfortable life. Therefore, it is suggested to remove the cap and leave it to the tribunal to determine the amount from case to case giving due regard to the financial condition of the legal heir and standard of living of the elderly.
- 2) The term '**maintenance**' defined only includes basic necessities of life such as food, clothing, shelter and medical aid. But in today's time the meaning of the term basic needs had undergone drastic change. It should also include safety and security to lead a comfortable and dignified life. Thus, it is suggested to broaden the definition of maintenance to include other necessities to lead a comfortable life not just basic need.
- 3) The definition of '**children**' only includes biological or adoptive son and daughter but not son-in-law or daughter-in-law. There is no guarantee that son-in-law/ daughter-in-law do not harass or abuse the senior citizens. Thus, the definition of children must be expanded to include daughter-in-law and son-in-law.
- 4) The Act states that '**childless senior citizens**' can claim maintenance from relatives who inherit their property but what about the senior citizens who do not have any

property? Who is going to maintain them? This is a serious issue that needs to be addressed. Every state should maintain such childless senior citizens by creating a fund for them.

- 5) The act does not mention anything about ‘**unmarried senior citizens**’ which needs to be addressed.
- 6) **Section 16** of the Act which says about appeal, only gives the right to appeal to parent/senior citizen and not children who may be aggrieved by the order of tribunal. This is a gross violation of principles of natural justice being done to children without giving them the opportunity of being heard.
- 7) **Section 19** gives a discretion to the state government in establishing old-age homes. Rather it is suggested to make it obligatory for the state government in setting up old-age homes. The word ‘may’ must be replaced with ‘shall’.
- 8) **Section 20** says the state government shall ensure that the Government hospitals are equipped with beds for senior citizens ‘as far as possible’. It is suggested that the wording ‘as far as possible’ be removed in order avoid vagueness and confusion.
- 9) Further, it is suggested to prepare an online exclusive digital portal where the senior citizens can file their complaints and see the progress of their proceedings without having to go to the tribunal again and again.
- 10) The most important aspect is creating awareness about the Act, procedure, tribunals, reliefs as most of the citizens are unaware about the Act and its application. This can be done by organizing awareness campaigns, online workshops etc.

**Goodfellows India** is one of its kind start-ups founded by Shantanu Naidu, backed by Ratan Tata, it provides companionship to senior citizens by connecting them to young empathetic graduates called ‘**goodfellows**’ in order fight loneliness. The senior citizens must create their profile on the website specifying their interests and preferences for goodfellows with whom they can communicate over phone call or in-person visits as per their convenience. The goodfellows give company to the senior citizens by looking after their health, accompanying to their doctor appointments, running errands and having meaningful-fun conversations with them. The senior citizens can also opt for free trial before committing to payment.

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